IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 2843 OF 2005.

Kum.Daiwat Prakash Meher. ... Petitioner.

Versus.

1.State of Maharashtra.
2.Prakash Harishchandra Meher. ... Respondents.

Shri Manisha Pant i/by M/s.Bhave & Co. for the Petitioner.

Shri N.N.Gavanekar with Shri Arfan Sait for the Respondent No.2.

Ms.S.V.Gajare, A.P.P.for Respondent-State.

CORAM : ABHAY S.OKA, J.

DATED : 13th October, 2006.

P.C.:

1. Rule. The learned A.P.P.waives service for the 1st Respondent. The learned Advocate for the 2nd Respondent waives service. Considering the facts and circumstances of the case, taken up for hearing forthwith.

2, The Petitioner is a minor who is represented by his mother. The allegation of the petitioner is that he is the son of the 2nd Respondent. The Petitioner through his mother filed a Criminal Application under section 125 of the Code of Criminal Procedure, 1973 claiming maintenance from the 2nd Respondent. The said application was contested by the 2nd Respondent by denying the relationship. The said application was decided by the Judicial Magistrate First Class by order

dated 17th March 2003. The said application was allowed by holding that the Petitioner is the son of the 2nd Respondent. A Revision Application was filed by the 2nd Respondent which has been allowed by the impugend order dated 28th April 2005. The Sessions Court accepted the case made out by the 2nd Respondent and dismissed the Application for maintenance filed by the Petitioner.

3. It will not be necessary to give detailed reasons as the parties are seeking an order by consent. The parties have agreed for a remand of the Application for maintenance to the Court of the learned Judicial Magistrate. The parties have also agreed for having a DNA Test conducted after the order of remand as the issue of paternity is involved. It is agreed between the Petitioner and the 2nd Respondent that the expenses for the DNA Test will be borne in equal shares by the mother of Petitioner and the 2nd Respondent. Since the issue is regarding paternity, the parties are free to lead further evidence.

4. In view of this the following order is passed:

i) The judgment and order dated 28th April 2005 passed by the Adhoc Additional Sessions Judge, Palghar in Criminal Revision Application No.50 of 2003 as well as the judgment and order dated 17th May 2003 passed in Misc.Application No.183

of 1994 by the Judicial Magistrate First Class, Vasai are quashed and set aside. Misc.Application No.183 of 1994 filed by the Petitioner is restored to file. The parties are directed to appear before the learned Judicial Magistrate First Class at Vasai on Monday the 27th November 2006 at 11.00 a.m. The parties will make necessary application before the learned Judicial Magistrate First Class for conduct of DNA Test.

ii) The parties will be free to lead further evidence in the matter.

iii) The learned Judicial Magistrate First Class, Vasai, will decide the Application as expeditiously as possible and preferably within a period of four monts from the date of receipt of the report of DNA test.

iv) All contentions of the parties are kept expressly open.

v) The parties and the concerned Court to act on an authenticated copy of this order.

Judge.